

HAROLD P. CANADY, ET AL.

IBLA 73-357

Decided February 23, 1977

Appeal from a decision of the Oregon State Office, Bureau of Land Management, denying a request for filing of environmental impact statement.

Affirmed as modified.

1. National Environmental Policy Act of 1969: Environmental Statements

Where the Bureau of Land Management denies a request for the filing of an Environmental Impact Statement for a single planned timber sale but is in the process of preparing a detailed Environmental Impact Statement for the sustained yield unit which includes the parcel in question, the probability that the district wide statement will adequately meet the requirements of NEPA with respect to the sale tract in issue justifies a denial of a request for a statement directed specifically to the smaller included sale.

APPEARANCES: William P. Hutchison, Esq., Hutchison and Hutchison, Portland, Oregon, for appellants; Donald P. Lawton, Office of the solicitor, Portland, Oregon, for appellee.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is taken from the February 5, 1973, decision of the Bureau of Land Management (BLM) Medford District Manager which held that the preparation of an Environmental Impact Statement was not required for the Iron Mountain Access Plan, presently entitled the Roundtop Mountain Timber Harvest and Access Plan or the Roundtop Land Management Plan. Responsive pleadings were exchanged, and pursuant to 43 CFR 4.415, the case was assigned to an administrative law judge for hearing. Hearings in this case were held in Medford, Oregon, and the administrative law judge submitted a recommended decision

dated May 13, 1976. Having carefully examined this recommended decision together with the extensive hearing record and the various written submissions, we have decided to adopt, with some modifications, the conclusions and findings of fact set forth by Judge Clarke.

Judge Clarke, in his first conclusion of law, states that "the Roundtop Management Project constitutes a major Federal action significantly affecting the quality of the human environment." Insofar as the Roundtop Management Project is typical of a comprehensive pattern of sales throughout the Josephine sustained yield unit, we agree with this finding. We do not, however, believe that this finding compels the conclusion that BLM must therefore prepare a separate Environmental Impact Statement (EIS) for the Roundtop project before that project is finalized. We anticipate, rather, that a unit-wide EIS will be the most appropriate action in this situation.

As Judge Clarke's opinion points out, the BLM, by virtue of a "Joint Motion for Court Approval of Agreement in Partial Settlement of Litigation" in the case of Natural Resource Defense Council, Inc. v. Thomas S. Kleppe, Civil Action No. 75-1861 (D.C.D.C., filed November 5, 1975), has agreed to prepare an EIS for the Josephine sustained yield unit which will be released in final form for public circulation in accordance with Sections 1500.7 and 1500.9 of the Council on Environmental Quality guidelines, by April 1, 1978. The appellants themselves have pointed out that, "the courts have been adamant in refusing to allow administrative agencies to break up a major project into several smaller ones that could be considered minor or insignificant." n1 Conversely, where an agency has consolidated a number of related actions into a single program and thus filed only a "program" EIS (in the face of protests by conservation organizations), the courts have acknowledged the adequacy of the single EIS where the overall statement met the objectives of NEPA more effectively than a series of individual statements. In Natural Resource Defense Council, Inc. v. Tennessee Valley Authority, 367 F. Supp. 122 (E.D. Tenn. 1973), the court, in upholding a program wide EIS in the face of a demand for a series of individual statements, noted some of the possible advantages that a program statement might have over the individual statements requested by the plaintiffs in that case. This opinion, at one point, quotes approvingly from a letter written by the General Counsel for the Council on Environmental Quality which states that:

A question of this nature has arisen with respect to a number of programs administered by various Federal agencies: Where a program

1/ Appellants' Hearing Memorandum, p. 13.

of a large number of individual actions, taken in accordance with uniform policies, can Section 102(2)(C) be implemented more effectively by the preparation of separate environmental impact statements on the individual actions or a single statement on the program [*5] as a whole? In some instances the single, overall environmental statement will be preferable, because it will permit avoidance of duplication, ensure consideration of cumulative effects, and make possible a more exhaustive examination of effects and alternatives than would be possible in an environmental statement on each individual action. * * *

However, this does not mean that Section 102(2)(C) is satisfied if such a statement is superficial or limited to generalities. The very rationale for an overall statement requires that environmental effects be cataloged in detail and all reasonable alternatives explored. Where the effects or alternatives are different for different actions covered by the overall statement those effects or alternatives must be considered separately in the statement. In short, the overall statement provides an opportunity to make the analysis of environmental issues more complete, not less rigorous. In addition, an overall environmental impact statement must be supplemented or updated as necessary to account for changes in the Federal program and to measure cumulative impacts over time. 2/

The opinion in TVA, supra, goes on to list several criteria or considerations for determining when a program statement is more valuable or functional than individual impact statements. These criteria are duplication of effort, development of cumulative effects, and more exhaustive consideration of the program. It is our opinion that all of these considerations are best served in this case at this time by a program statement detailing the BLM's timber sale plans for the Josephine sustained yield unit including the Roundtop Mountain tract. Duplication of effort is a consideration which weighs especially heavily in favor of the adequacy of a single overall statement in this situation. To require an EIS as a precondition to every 240-acre BLM timber sale would create an intolerable administrative burden given the fact that, in the Medford District alone, there are 900,000 acres of managed land.

2/ Id. at 126.

We do not mean to suggest by this decision that a sweeping and unspecific district-wide EIS will satisfy the command of Section 102 of NEPA. As the court noted in TVA, supra:

A program statement will not satisfy the requirements of Section 102, however, if it is superficial or limited to generalities. Where all significant issues cannot be anticipated or adequately treated in connection with the program as a whole, statements of more limited scope will be necessary on subsequent, individual actions in order to complete the analysis. 3/

However, by virtue of the agreement reached in Kleppe, supra, BLM has committed itself to the preparation of highly detailed EIS's covering each of the 13 sustained yield units in western Oregon. Significantly, the draft EIS for the Josephine Sustained Yield Unit, Medford District (the unit here at issue) is scheduled to be the first draft completed under this agreement and we understand that BLM officials believe they will complete that draft by October 1, 1977, as originally scheduled. Thus it appears from the progress of the settlement in Kleppe that there is every reason to expect the prompt completion of a carefully drawn EIS for the Josephine Sustained Yield Unit and we therefore find that the preparation of an individual EIS for the Roundtop Mountain sale is inappropriate and unnecessary at this time. 4/

Since the only justiciable issue before the BLM state office in the decision below was the request for an environmental impact statement, we do not reach appellant's claims that the Roundtop Mountain Sale Plan will violate the principle of sustained yield. We believe that a decision on this issue would be premature. We expect that this issue will be more fully developed by the preparation of the Josephine Unit EIS which, according to the settlement in Kleppe, supra, will contain an analysis of "the annual volume of timber harvest proposed to be offered * * * including an explanation of why this volume is consistent with the principle of sustained yield, and a description of alternative levels of timber harvest that were considered."

3/ Id. at 127.

4/ BLM has offered, as part of a pending settlement in the case of Downing v. Frizzell, Civil No. 75-1128 (D.C. Ore., filed December 9, 1975), to postpone the sale of timber on five disputed tracts including Roundtop Mountain. Thus it appears that appellants will not be prejudiced by awaiting the production of the Josephine Unit EIS.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Frederick Fishman

Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Douglas E. Henriques
Administrative Judge

